



POLICE DEPARTMENT

May 21, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Adam Landau
Tax Registry No. 932879
44 Precinct
Disciplinary Case No. 2010 2153

The above named member of the Department appeared before me on April 17, 2012, charged with the following:

1. Said Police Officer Adam Landau, assigned to the 44th Precinct, while on-duty, on or about July 30, 2010, within the confines of the 44th Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer failed to properly safeguard a prisoner, Person A, resulting in said prisoner's escape.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE IN MITIGATION

Respondent entered a plea of guilty to the one specification in this case.

Respondent, an eight-year member of the Department, was initially assigned to 42 Precinct for field training. In July 2004, Respondent was transferred to the 44 Precinct where he is currently assigned. Respondent is assigned to patrol duties on the third platoon, and has never been the subject of charges and specifications prior to this case.

On Friday, July 30, 2010, Respondent was assigned to perform uniformed patrol in a marked van with Police Officer Belkys Bernard during the second platoon (0705 hours to 1540 hours). Upon completion of the second platoon roll call, Respondent had to report to the desk officer in regards to the transport of prisoners to Bronx Central Booking (BCB). Respondent was handed a stack of movement slips which he took into the cell area. Respondent cuffed the prisoners to be transported to a daisy chain after using the movement slips to verify the identity of each prisoner. There were a total of ten prisoners cuffed to the daisy chain for transport. The prisoners were brought in front of the desk where the cuffs were checked a second time. The prisoners were walked out to the marked van which was in the rear parking lot of the 44 Precinct after notations to record the transport of the prisoners was made in the appropriate logs.

Respondent was the operator of the marked van, and Bernard was the recorder. Bernard sat in the front passenger seat, and the prisoners occupied the three rear bench seats in the back of the van. Respondent described the daisy chain as a chain which consisted of ten single cuffs.

As Respondent approached BCB, he was travelling southbound on Sherman Avenue between 161 Street, and 163 Street. According to Respondent, there were

civilian vehicles, official vehicles, and Department vehicles parked in the numerous parking spots along both sides of the street. Respondent further added that his arrival at BCB coincided with normal business hours on a weekday. Respondent described the entrance to BCB as "...an unsecured door, small hallway, then a secured door. In between the door on the side of the building and the sidewalk, there are two jersey barriers with metal gates welded into them, and two folded metal gates that are meant to be locked in a position to simulate a sally port." Respondent defined a sally port as a secured area where prisoners can be loaded and unloaded. Respondent offered a more detailed description by testifying that the sally port at BCB consisted of:

...two cement jersey barriers, they are positioned on the sidewalk and extend out standard length, which I have no idea what that is. They come out. Mounted, secured into the top of these jersey barriers is metal fencing that I have to estimate is somewhere between 10 and 12 feet tall. The end is about half a car length into the street, if a car was perpendicular parked up on the sidewalk. About half a car length into the street.

In between the street and the door to central booking is a pedestrian sidewalk. At this point, affixed to these jersey barriers is two swinging metal gates that are meant to be left open for when people are walking up and down the street. When the police department is using the sally port to load and unload prisoners, at this point, it is our responsibility to force the gates to be closed. The only locking mechanism is a steel pipe, a solid steel pipe that's supposed to go into a hole in the cement that's approximately one to two inches deep to prevent the immediate and quick removal of the gates.

Respondent agreed that the sally port provides a relatively, yet not completely, secure area to convey the prisoners from the van to BCB. Respondent also agreed that it is more secure than simply walking the prisoners in the street. According to Respondent,

the sally port can only hold one vehicle at a time, and he could not use the sally port at that time because the sally port was already occupied by a vehicle. Respondent acknowledged that he was not aware of any process in which he could call BCB and ask if somebody could move the vehicle parked in the sally port. Respondent's next option was to survey the area to locate another secure or semi-secure area to unload the prisoners. Respondent located an area that was approximately one-and-a-half car lengths south of the sally port between two parked vans, and believed that this area was the most secure place to unload the prisoners.

According to Respondent, there were ten prisoners that were unloaded from the van. The prisoners were instructed to follow Bernard. Bernard led the prisoners between the two parked vans, made a right-hand turn and traveled northbound for approximately 15 to 20 feet, and ultimately stopped at the entrance door to BCB. Respondent explained that he watched his partner lead the prisoners to the door of central booking from a tactical position because he was attempting to simultaneously secure Department property. Respondent had been informed that members of the Internal Affairs Bureau (IAB) were in the area in regards to illegally parked vehicles. Respondent believed that the only way for him to indicate that his van was involved in police activity would have been to leave the turret lights on, and the only way to leave the turret lights on would be to leave the keys in the vehicle with the vehicle engine running. Respondent realized that he had an obligation to secure the van. Respondent admitted that he lost sight of the prisoners for approximately a second as he took a side step because his view was blocked by one of the vans. Respondent then observed Bernard proceed through the entrance hallway and secured doors of BCB with the prisoners. It was Respondent's belief that all

ten prisoners were now inside of BCB despite the reality of the situation was that one of the prisoners had escaped. Respondent clarified that the prisoners only walked between the two parked vans immediately after exiting Respondent's van. The prisoners could then walk from the sidewalk to the entrance of BCB.

Respondent returned to his vehicle and began to drive around the area for approximately 20 minutes in an effort to find a legal parking spot. After finally parking the vehicle, it took Respondent five minutes to walk back to the entrance of BCB. Approximately 25 minutes passed after Respondent saw Bernard enter BCB with the prisoners. After entering BCB, Respondent proceeded to an area where a civilian member of the Department photographed the prisoners. There were numerous other prisoners present who were being transported by other members of the service at that time. Respondent waited approximately 15 to 20 minutes before it was his turn to have his prisoners photographed. Respondent proceeded to put the movement slips in order to expedite the photo taking process by reading out the names of the prisoners that he transported. After calling out the name of prisoner Person A, Respondent noticed that there was no response. At that point, Respondent saw an empty cuff on the daisy chain. For the next three minutes, Respondent searched the immediate area within central booking to see if the missing prisoner had either slipped out of the cuff, or was taken to the bathroom. The brief search yielded negative results. Respondent then went to the BCB desk officer to inform her that he was missing a prisoner. The desk officer directed Respondent to conduct another search of the immediate area. The second search within BCB also yielded negative results. Respondent conferred with Bernard, who informed him that she did not remove any of the prisoners from the daisy chain.

Respondent acknowledged that Person A was apprehended at his home approximately 30 to 45 minutes after it was discovered that he had escaped.

Under cross-examination, Respondent testified that he was interviewed by investigators on the day in question. Respondent acknowledged that during his official Department interview he stated that he left the turret lights on to ensure the safety for the prisoners, his partner, and himself by attempting to prevent a potential motor vehicle accident caused by a motorist accidentally striking his vehicle. Respondent explained that at one point during the interview, he made mention of his concern that the vehicle might be towed by the IAB. Respondent also recalled one of the union representatives making mention of IAB towing vehicles.

Respondent agreed that prisoners should be kept under constant observation when being transported in order to prevent either the escape or injury of the prisoners. Respondent confirmed that the prisoners transported on July 30, 2010, were transported with one hand cuffed to a daisy chain, and one hand free. It was Respondent's opinion that the rear cuffing of prisoners was a more secure way to transport the prisoners. Respondent agreed that it is possible for a prisoner who has one hand cuffed to a daisy chain to use the free hand to retrieve secreted contraband. The prisoners transported by Respondent on July 30, 2010, were not secured with leg shackles. Respondent affirmed that it was even more important to keep the prisoners under constant observation because they were being transported with one hand free.

Respondent testified that he did not stay right behind the prisoners and escort them to the entrance of central booking after they exited the van. Respondent also acknowledged that he failed to maintain constant observation of the prisoners when he

lost sight of the prisoners for approximately one to two seconds. Respondent agreed that it was because of the one to two seconds during which he lost sight of the prisoners that he was unaware that a prisoner had escaped. Respondent estimated that it was approximately 45 minutes before he realized that a prisoner had escaped.

According to Respondent, his van was double parked in the middle of a one way street. Traffic on the street would have been blocked by the van. Respondent acknowledged that it was possible to use the van's hazard lights, but testified that Department procedure would call for the use of turret light to identify the vehicle as a Department vehicle engaged in police activity. According to the Respondent, the manufacturer designed the hazard lights to provide some degree of safety. Respondent explained that the vehicle's hazard lights could have been used without the vehicle's engine running, and the turret lights could only be used with the vehicle's engine running. Respondent conceded that it may have been possible to keep the prisoners under constant observation had he not kept the turret lights on which required the vehicle to be secured because the vehicle's engine was running.

Under examination by the Court, Respondent testified that he arrived at BCB at approximately 0900 hours. BCB is in the vicinity of the courthouse, and Respondent acknowledged that 0900 hours is the time that people arrive at the courthouse. Respondent explained that it has been his experience that the beginning of the day is an extremely busy time at the courthouse.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty and acknowledges his responsibility in this matter. The only issue is penalty. The Department has recommended a penalty involving the loss of 20 days comprised of 11 days previously served on suspension¹ and the loss of an additional 9 vacation days. Respondent argues that a penalty involving the loss of the 11 days already served on suspension² is the appropriate penalty. Both sides have cited numerous prior cases.

Looking at those cases it would appear for the most part that the loss of a prisoner has resulted in a penalty in the vicinity of 10 days.³ Lost prisoner cases that have garnered higher penalties have had serious aggravating factors or additional charges.⁴

¹ Respondent was suspended from July 30, 2010, through August 10, 2010 (12 days).

² Ibid.

³ Sixteen-and-a-half-year police officer with no prior disciplinary record negotiated a penalty of 10 days already served on suspension without pay for failure to safeguard a prisoner resulting in the prisoner escaping (Disciplinary Case No. 2010-165, signed December 12, 2011); Nineteen-year police officer with no prior disciplinary record negotiated a penalty of 10 vacation days for failing to match the prisoner movement slips with correct prisoners lodged in intake, resulting in the release of the wrong prisoner (Disciplinary Case No. 2010-2412, signed December 20, 2011); Ten-year sergeant with no prior disciplinary record negotiated a penalty of 10 vacation days for failing to properly safeguarding a prisoner when the Respondent produced the wrong prisoner for arraignment, resulting in the improper release of said prisoner (Disciplinary Case No. 2010-1629, signed January 2, 2012); Six-year police officer with no prior disciplinary record negotiated a penalty of 10 vacation days for failing to keep a constant observation of an arrestee, resulting in her escape, and failing to make an immediate radio transmission after becoming aware of the escape (Disciplinary Case No. 2010-3061, signed January 2, 2012).

⁴ Twenty-one-year detective with one prior adjudication negotiated a penalty of 20 vacation days for failing to safeguard a prisoner by leaving prisoner unattended in police van, failing to prepare Property Clerk Invoice Worksheet for a cell phone belonging to a person who had been arrested, and for front-handcuffing a prisoner in police custody (Disciplinary Case No. 2010-3149, signed February 1, 2012); Eight-year police officer with no prior disciplinary record negotiated a penalty of 13 vacation days for failing to

None of those factors are present here. The fact that Respondent double parked the van and left the ignition on so that the turret light could continue to work are not, in the view of this Court, aggravating factors but part and parcel of how the escape occurred.

Respondent noted that the sally port was in use and he apparently left the turret light on to make clear that the vehicle was actively on official police business in an area where police vehicles were otherwise being towed. His attention was divided between the prisoners and the van and he acknowledged that he lost sight of the prisoner who in that moment escaped.

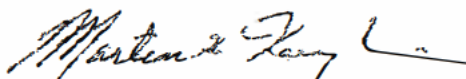
Respondent promptly reported the matter when he realized the prisoner was missing and the prisoner was recaptured a short time later at his home.

It is therefore recommended that penalty in this matter be 12 days already served on suspension.

APPROVED
DEC 03 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

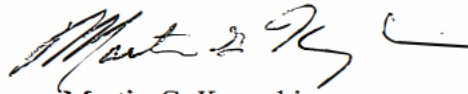
properly search two prisoners during prisoner transport resulting in each prisoner having more than \$100.00 on their person, failing to safeguard a prisoner resulting in his escape, and transporting two prisoners in a Department van without another uniformed member of the service present (Disciplinary Case Nos. 2010-1072 & 2010-995, signed October 4, 2011); Nine-year sergeant with no prior disciplinary record negotiated a penalty of 14 suspension days already served without pay for failure to safeguard a prisoner. The sergeant, who was assigned as the Desk Officer, failed to assign personnel to guard prisoners in the holding area resulting in the escape of a female prisoner who was handcuffed to a bar outside of a cell (Disciplinary Case No. 2009-132, signed November 8, 2011); Nine-year police officer with no prior disciplinary record forfeited 21 suspension days already served after a mitigation hearing for failing to properly safeguard a prisoner, resulting in the prisoner's temporary escape, and then failing to immediately notify a supervisor of the incident. The prisoner escaped for several minutes on the way to Central Booking (Disciplinary Case No. 84649/08, signed August 8, 2011); Twenty-two-and-a-half-year detective with no prior disciplinary record negotiated a penalty of 20 days time already served on suspension for failure to take proper measures to secure a prisoner resulting in the prisoner escaping. In that case a handcuffed and leg shackled prisoner was left in a Department vehicle with the keys in the ignition. The prisoner, despite being restrained, drove off in the vehicle (Disciplinary Case No. 2010-3179, signed April 25, 2011).

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ADAM LANDAU
TAX REGISTRY NO. 932879
DISCIPLINARY CASE NO. 2010 2153

In 2010 and 2011, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009. In his nine years of service [REDACTED]
[REDACTED]
[REDACTED] He has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials